

December 10, 2002

To: Each Supervisor

From: David E. Janssen  
Chief Administrative Officer

Lloyd W. Pellman  
County Counsel

J. Tyler McCauley  
Auditor-Controller

**SHERIFF'S DEPARTMENT CONTRACT WITH HENRY MAYO NEWHALL  
MEMORIAL HOSPITAL AND SPECIAL CIRCUMSTANCES WAIVER OF THE  
CONTRACTOR JURY SERVICE ORDINANCE**

On October 22, 2002, your Board approved a special circumstance waiver of the Contractor Employee Jury Service Ordinance requirement for a contract between the Sheriff's Department and Henry Mayo Newhall Memorial Hospital (Henry Mayo). The Sheriff's recommendation for a contract indicated that Henry Mayo agreed to annually justify the continuance of the waiver based on its financial condition and collective bargaining issues. In approving the contract, your Board directed the Auditor-Controller, the Chief Administrative Officer (CAO), and the County Counsel to examine the circumstances prompting the waiver and the annual review of those circumstances. This memorandum responds to that request and includes our recommendation that an annual review of the contract would not be beneficial because the special circumstances justifying the waiver go beyond the financial condition and collective bargaining issues of the hospital, as explained below.

**Background**

The Contractor Employee Jury Service Ordinance requires contractors to provide employees five days of paid jury service benefits. It additionally defines a contract as "any agreement with a contractor to provide goods to, or perform services for, or on behalf of, the County."

The ordinance provides two exceptions and excludes a number of specific types of contracts. For example, the ordinance includes exceptions for small businesses and contractors with collective bargaining agreements that expressly supersede the ordinance. The ordinance also defines "contract" for the purposes of this program to exclude bona fide emergency purchases, monopoly purchases, and non-agreement purchases less than \$5,000. These exceptions and exclusions are very narrow in scope and tailored to address specific concerns.

It was not possible to foresee every circumstance that might justify an exclusion from the ordinance. Accordingly, the ordinance was drafted to include an option for your Board to waive the jury service requirement in unique and rare situations. Only your Board can make the necessary finding to justify a special circumstances waiver.

Your Board's cautious approach to granting a waiver only in the most compelling situations protects the integrity of the ordinance. We recommend that the waiver not be granted merely because a contractor claims they cannot afford to implement the ordinance.

### **Review of Waiver Request**

At your Board's request, we have reviewed the waiver of the jury service requirement for Henry Mayo. We believe that three factors in this contract presented the type of unique and somewhat rare combination of special circumstances that justified your Board granting the waiver.

The first, and possibly the most important factor, was the unique nature of the contract. Henry Mayo did not seek to contract with the County; rather, it is required by State law to provide emergency outpatient and inpatient hospital and medical services to all persons, including inmates of the Sheriff's Department Pitchess Detention Center. The contract is, in effect, only a fee reimbursement agreement for services mandated by the State. This is an unusual departure from a typical procurement where bidders/proposers are fully informed of the jury service requirement and make a choice to do business with the County and comply with its requirements.

The second important factor is that the hospital is the only critical care facility within acceptable proximity to the Sheriff's Department Pitchess Detention Center.

The third factor is that the hospital is in bankruptcy and claimed it could not afford to provide its employees with five days of regular pay for jury service.

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### **Annual Review of Waiver**

We have reviewed the intent of the annual review of the circumstances justifying the waiver. If the waiver was based only on the financial condition of the hospital, something we would not recommend, we believe that conducting an annual review of the waiver to determine its continued justification would be useful and prudent. However, the waiver was based on a combination of special circumstances that went well beyond the financial condition of the hospital and, therefore, we do not believe an annual review would be beneficial. Certainly, the Sheriff should monitor the financial health of Henry Mayo, as a good business practice, and be alert to any new critical care facilities in proximity to Pitchess Detention Center that might provide, or be willing to provide, jury service benefits. However, the basic and unique nature of the County's contract relationship with Henry Mayo is a condition that remains constant and justifies the ongoing waiver without future annual reviews.

If you have any questions, please contact Nan Flette of the CAO's office at (213) 974-1168, David Michaelson of County Counsel at (213) 974-1832, or Pat McMahon of the Auditor-Controller at (213) 974-0729.

DEJ:LWP  
JTM:nl

c: Sheriff  
Executive Officer, Board of Supervisors